

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

DONALD FREEMAN,)	
)	
Plaintiff,)	
)	Civil Action
)	
vs.)	File No. 3:08 cv 104
)	
TERRY RAY MITCHELL, et al.,)	
)	
Defendants.)	

PLAINTIFF'S MOTION TO REMAND

COMES NOW Plaintiff, Donald Freeman, and moves this Court pursuant to 28 U.S.C. § 1447(c) to remand this case to Russell County Circuit Court, the Court from which it was improperly removed. In support thereof, Plaintiff requests and shows this Court as follows:

1.

On January 17, 2008, Plaintiff filed this civil action against Defendants Terry Ray Mitchell and Janice Mitchell, d/b/a Mitchell Enterprise, who were both Georgia residents on that date. The case was filed in the Circuit Court of Russell County, State of Alabama, Civil Action File No. CV-08-024.

2.

On February 11, 2008, Defendants filed their Notice of Removal pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1441. Prior to filing their Notice of Removal, Defendants were informed Plaintiff was a resident of Georgia.

3.

On January 17, 2008, the date of the filing of this action in the Circuit Court of Russell County, Alabama, Plaintiff shows he was a resident of the State of Georgia, and had been since September 2007. (See Affidavit of Donald Freeman, attached hereto as Exhibit "A").

4.

On said date of filing, Defendant Terry Mitchell was a resident of Georgia, and Defendant Janice Mitchell, d/b/a Mitchell Enterprise, was also an individual and/or a Georgia corporation with her principal residence and place of business in Georgia. (See Paragraph 1 of Defendant Terry Ray Mitchell's Answer to Complaint, Pacer doc 3, and Paragraph 2 of Defendant Janice Mitchell, d/b/a Mitchell Enterprise's Answer to Complaint, Pacer doc 2). Therefore, as of the date this action was filed, both Defendants and Plaintiff resided in Georgia, thus destroying diversity of citizenship in this case.

5.

Plaintiff respectfully moves this Court to remand this case back to Russell County Circuit Court, and requests payment of costs pursuant to 28 U.S.C. § 1447(c).

6.

Plaintiff's Motion is supported by his Affidavit, Memorandum of Law, the pleadings filed of record, and the exhibits attached thereto.

WHEREFORE, Plaintiff respectfully requests that this Court to grant his Motion to Remand with all costs taxed against the Defendant.

This 5th day of March, 2008.

Respectfully submitted,

/s/ Stephen J. Hodges
PHILIPS BRANCH
Alabama Bar No. ASB-5871-T36H
Attorney for Plaintiff

1415 Wynnton Road
P. O. Box 2808
Columbus, GA 31906
(706) 323-6461

/s/ J. Benjamin Burns
J. BENJAMIN BURNS, P.C.
Georgia Bar No. 096525
Attorney for Plaintiff

818 Broadway
P. O. Box 1573
Columbus, GA 31902
(706) 322-3414

CERTIFICATE OF SERVICE

This is to certify that I have this date served the foregoing Plaintiff's Motion to Remand by electronic filing and/or by depositing a copy in the United States Mail, with adequate postage affixed, and addressed as follows:

K. Donald Simms, Esq.
James M. Strong, Esq.
Whitaker, Mudd, Simms, Luke & Wells, LLC
2001 Park Place North
Suite 400
Birmingham, Alabama 35203
ksimms@wmslawfirm.com
jstrong@wmslawfirm.com

This 5 day of March, 2008.

/s/ Stephen J. Hodges
PHILIPS BRANCH
Alabama Bar No. ASB-5871-T36H
Attorney for Plaintiff

1415 Wynnton Road
P. O. Box 2808
Columbus, GA 31906
(706) 323-6461

STATE OF GEORGIA

COUNTY OF MUSCOGEE

AFFIDAVIT OF
DONALD FREEMAN

Personally appeared before the undersigned officer, duly authorized by law to administer oaths, Donald Freeman, who after being duly sworn deposes and states that he has personal knowledge of the following facts and they are true and correct:

1.

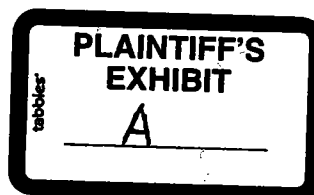
My name is Donald Freeman. I am of legal age, suffer from no legal disabilities and I am competent to testify regarding the matters set forth herein.

2.

I hereby certify that the statements made in this Affidavit are based on my personal knowledge. I execute this Affidavit freely and voluntarily.

3.

I am a resident of the State of Georgia and have been since August 2007. My initial address was 912 31st Street, Apartment D, Columbus, Georgia 31904. I currently reside at 1415½ Gordon Court, Apartment A, Columbus, Georgia 31906. My vehicle is registered in the State of Georgia, and has been since September 20, 2007. I currently hold a valid Georgia Drivers License, and have done so since September 14, 2007. A copy of each document is attached hereto as Exhibit A-1 and Exhibit A-2 respectively.



4.

My lawsuit against Defendants Terry Mitchell and Janice Mitchell, d/b/a Mitchell Enterprise was filed in the Circuit Court of Russell County on the 17th day of January, 2008.

I was a resident of the State of Georgia on that date.

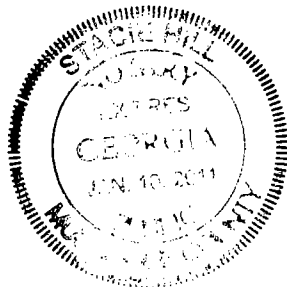
FURTHER AFFIANT SAYETH NOT.

Donald Freeman
Donald Freeman

Sworn to and subscribed before me, this
the 5th day of March, 2008.

Stacie Hill
Notary Public, Muscogee County, GA.

My Commission Expires: _____



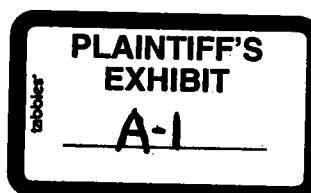
STATE OF GEORGIA
MOTOR VEHICLE REGISTRATION

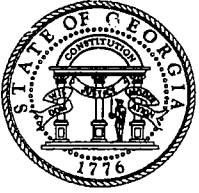
2FTRX17W14CA92883 - 2004 FORD F-150 TK

Tag Number:	AVP0764	Expires:	05/06/2008
Valuation:	105054	Tag Fee:	20.00
Title Number:	174802072639004	Equip. No:	
County:	004	District:	01
Farm Vehicle?	N	Mill Rate:	
		GVW:	
Classification:	PASSENGER CAR/LIGHT TRUCKS	Fuel:	G
		Color:	BLU
Insurance Status:	VALID INSURANCE COVERAGE		
Customer 1 No:	000054876432	Customer 2 No:	

DONALD E. FREEMAN
912 31ST ST APT D
COLUMBUS GA 31904-7791

Signature: Donald E. Freeman





GEORGIA MOTOR VEHICLE DIVISION TITLE AND TAG HISTORY

Page 3 OF 3

02/21/08 15:03:44 \$004VLV

TITLE NBR: 776600072752004 STATUS: CURRENT TITLE, NOT HELD

Purchase Date: 03/25/2006 Print Date: 10/05/2007 Lease: NO Title Microfilm Nbr: DM:178523070

Nbr of Owners: 1 1st. OWNER: DONALD E FREEMAN
912 31ST ST APT D COLUMBUS GA 31904-7791AVP0764 2004 AA - PASSENGER CAR/LIGHT TRUCKS Iss: 09/20/2007 Exp: 05/06/2008 Status: 09/20/2007 ACTIVE
Microfilm Nbr:

TITLE NBR: 174802072639004 STATUS: CONTROL NUMBER CANCELLED

Purchase Date: 10/02/2007 Print Date: 09/20/2007 Lease: NO Title Microfilm Nbr:

Nbr of Owners: 1 1st. OWNER: DONALD E FREEMAN
912 31ST ST APT D COLUMBUS GA 31904-7791AVP0764 2004 AA - PASSENGER CAR/LIGHT TRUCKS Iss: 09/20/2007 Exp: 05/06/2008 Status: 09/20/2007 ACTIVE
Microfilm Nbr:

TITLE NBR: 774341041848004 STATUS: CANCELLED TO ANOTHER STATE - AL

Purchase Date: 06/24/2004 Print Date: 07/07/2004 Lease: NO Title Microfilm Nbr: R25637F1125

Nbr of Owners: 1 1st. OWNER: EDWARD JOHN KELLER
1215 VESPER DR COLUMBUS GA 31904-1550BQ630M 2004 BW - BOBWHITE QUAIL Iss: 11/15/2005 Exp: 11/16/2006 Status: 04/10/2006 TRANSFERRED
Microfilm Nbr:BQ630M 2004 BW - BOBWHITE QUAIL Iss: 10/28/2004 Exp: 11/16/2005 Status: 11/15/2005 RENEWED
Microfilm Nbr:EH92F BW - BOBWHITE QUAIL Iss: 11/05/2003 Exp: 11/16/2004 Status: 10/28/2004 RENEWED
Microfilm Nbr:

 **Georgia**
DRIVER'S LICENSE
NUMBER **054876432** EXPIRES **05-06-2012**

REEMAN, DONALD E
12 31ST ST APT D
COLUMBUS, GA 31904-7791

SEX	BIRTHDATE	ISSUE DATE	COUNTY
M	05-06-1954	09-14-2007	106
EIGHT	WEIGHT	CSC	FEE
5-06	256	4 55	020.00
			RESTRICTIONS
			B
CLASS	ENDORSEMENTS	TYPE	
DM		REG	

Donald Edward Freeman

COMMISSIONER

Haynes C. Dyer

PLAINTIFF'S
EXHIBIT

A-2